



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 8303355

Date: NOV. 27, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a marketing and general management professional, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## **I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding her claim of eligibility under Dhanasar's first prong, the Petitioner indicated that she intends to start a consulting business [REDACTED] to provide support and advisory services to property management companies and other small businesses in Florida. She asserted that her consulting services will assist aspiring entrepreneurs in gaining "the confidence to reach for their dreams by starting their own business." The Petitioner further stated that her undertaking is aimed at "three (3) related industry sectors in [REDACTED] Florida: property management, construction, and accommodations/food service, which are closely tied to tourism." She also contended that "[b]y advising small businesses throughout Florida, she expects that she will be able to improve the survival rate of small and mid-sized businesses, thus improving the local and state-wide economy." In her appeal brief, the Petitioner maintains that her proposed "endeavor is to establish a professional consulting and advisory firm that is focused on providing small businesses, such as property management firms, with advice, strategies, and implementations of recommendations on how to increase revenues, expand profits, grow the business, recruit new and retain existing employees, and provide better service to their customers."

The Petitioner presented a business plan for [REDACTED] which states that the company will help "U.S. property management firms modernize their service platforms, become more efficient, and expand their businesses and create new jobs." This business plan includes market analyses, information about the proposed company and its services, financial forecasts and projections, business development strategies, and a description of the Petitioner's work experience in Brazil. Regarding future staffing, the Petitioner's business plan anticipates that [REDACTED] will employ five personnel in year one, eight in year two, and eleven in year three. In addition, her plan offers revenue projections of \$301,500 in year one, \$641,550 in year two, and \$962,325 in year three. The Petitioner, however, does not adequately explain how these staffing and revenue forecasts were calculated.

The record includes a May 2019 letter of intent signed by the Petitioner and [REDACTED] [REDACTED] to enter into a business agreement, a June 2019 email from a customer care manager at [REDACTED] [REDACTED] to the Petitioner expressing interest in a partnership to attract "investments from abroad," a June 2019 email from [REDACTED] to the Petitioner discussing "home purchase/investment options" for potential real estate buyers, and a letter from [REDACTED]

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<sup>3</sup> See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[redacted] to the Petitioner relating to his interest in investing in the U.S. real estate market. She also offered a letter from [redacted] adjunct associate professor at [redacted] University, discussing the U.S. strategic marketing and consulting services industry, including a general description of industry services and information about its market value and annual revenue. [redacted] contends that the Petitioner's proposed work has national importance due to the size of the industry and because her work stands "to support the growth of small businesses within the Latin American region and the United States."

Furthermore, the record contains information about entrepreneurship as a driver of new jobs and economic growth, young companies as a primary source of job creation, immigrant entrepreneurship in America, the downside of [redacted]'s reliance on the tourism industry, the population of the [redacted] metropolitan area, and [redacted] Florida hotel occupancy rates and revenue. The Petitioner also provided articles discussing U.S entrepreneurship statistics, the percentage of businesses that fail, [redacted] Florida's small business ranking, entrepreneurs' need for more mentoring, Florida's business-friendly environment, the six industries driving Florida's gross domestic product growth, and reduced price growth in the [redacted] housing market in 2018. Additionally, she offered information about national trends in business startup activity, Florida's small business profile, the value of entrepreneurship in fostering economic growth, the U.S. Small Business Administration (SBA), SBA services and guidance, the SCORE business mentoring program<sup>4</sup>, the effect of tourism on the [redacted] region, and housing investment opportunities for 2018 (ranking [redacted]). The record therefore supports the Director's determination that the Petitioner's proposed work as a small business consultant has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In her appeal brief, the Petitioner asserts that her proposed endeavor "will stimulate and support entrepreneurship, which is the very lifeblood of the U.S. economy." She contends that due to the breadth of the small business market, her undertaking "will have the capacity to make a strong impact in the field." The Petitioner also argues that her proposed consulting services offer "vast [e]ffects . . . on the small businesses of the United States." She further states that her proposed work affects "a matter that a government entity has described as having national importance or is the subject of national initiatives." For example, she points to the SBA's resource partnership with the SCORE business mentoring program and maintains that this type of partnership "shows that the United States has a specific interest in small business counseling and coaching." Additionally, the Petitioner claims that "[t]he health and growth of

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<sup>4</sup> The information indicates that SCORE is a non-profit "network of volunteer, expert business mentors" dedicated to helping "entrepreneurs start and grow their small businesses."

small businesses” resulting from her endeavor “will have economic and societal impacts as shown in the research provided.”<sup>5</sup>

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the Petitioner’s statements reflect her intention to provide valuable consulting services for her future clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her company and its future clientele to impact the small business consulting field, the property management industry, or the U.S. or Florida economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her company’s future staffing levels and consulting activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner’s undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not offered sufficient evidence that the area where [REDACTED] operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increases in small business employment or income attributable to her company’s future consulting services stand to substantially affect economic activity or tax revenue in Florida or nationally. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

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<sup>5</sup> The research provided relates to the marketing and consulting industries, entrepreneurship, and U.S. and Florida small business data in general rather than the implications associated with the Petitioner’s particular proposed endeavor. The issue here is not the broader implications of the Petitioner’s field as a whole or the industry at large, but rather the potential prospective impact of her specific proposed work as a small business consultant.

ORDER:     The appeal is dismissed.